

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AIMEE L.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C20-504-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of her application for Supplemental Security Income. Plaintiff contends the administrative law judge (“ALJ”) erred in discounting her testimony and certain medical opinions. (Dkt. #16 at 1.) As discussed below, the Court REVERSES the Commissioner’s final decision and REMANDS the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

II. BACKGROUND

Plaintiff was born in 1970, and has a 9th-grade education and GED, as well as cosmetology training. AR at 44, 231. She previously worked as a restaurant waitress/hostess and painter. *Id.* at 45, 231. Plaintiff was last gainfully employed in 2015 or 2016. *Id.* at 45-46.

In October 2016, Plaintiff applied for benefits, alleging disability as of February 28,

2014. AR at 199-207. Plaintiff's application was denied initially and on reconsideration, and Plaintiff requested a hearing. *Id.* at 113-21, 125-34. After the ALJ conducted a hearing in October 2018 (*id.* at 33-70), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 17-27.

Utilizing the five-step disability evaluation process,¹ the ALJ found:

Step one: Plaintiff has not engaged in substantial gainful activity since the application date.

Step two: Plaintiff has the following severe impairments: attention deficit hyperactivity disorder, depression, fibromyalgia, and left knee degenerative joint disease.

Step three: These impairments do not meet or equal the requirements of a listed impairment.²

Residual Functional Capacity: Plaintiff can perform light work with additional limitations: she can lift/carry 20 pounds occasionally and 10 pounds frequently. She can stand and/or walk for six hours and sit for six hours, in an eight-hour workday. She can frequently climb ramps and stairs, but cannot climb ladders, ropes, or scaffolds. She can frequently balance, stoop, kneel, crouch, and crawl. She can occasionally reach overhead bilaterally. She can have no concentrated exposure to extreme cold, vibration, or hazards (such as moving machinery, heights, etc.). She is able to understand, remember, and perform simple, routine tasks. She can have occasional superficial contact with the public.

Step four: Plaintiff cannot perform past relevant work.

Step five: As there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, Plaintiff is not disabled.

AR at 17-27.

As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the Commissioner to this Court. (Dkt. ## 1, 4.)

III. LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social

¹ 20 C.F.R. § 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 security benefits when the ALJ’s findings are based on legal error or not supported by substantial
 2 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
 3 general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the
 4 ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
 5 (cited sources omitted). The Court looks to “the record as a whole to determine whether the error
 6 alters the outcome of the case.” *Id.*

7 “Substantial evidence” is more than a scintilla, less than a preponderance, and is such
 8 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 9 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
 10 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
 11 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
 12 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
 13 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
 14 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
 15 rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

16 IV. DISCUSSION

17 A. The ALJ Erred in Assessing Medical Opinion Evidence

18 Plaintiff challenges the ALJ’s assessment of medical opinions written by examining
 19 psychologists John Arnold, Ph.D., and Thomas Rowe, Ph.D.; and treating nurse Linda Van Hoff,
 20 ARNP. *See* AR at 357-61, 632-40, 345-47. The Court will consider each disputed opinion in
 21 turn.

22 1. Legal Standards

23 In general, more weight should be given to the opinion of a treating doctor than to a non-

1 treating doctor, and more weight to the opinion of an examining doctor than to a non-examining
2 doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted by another
3 doctor, a treating or examining doctor's opinion may be rejected only for "clear and convincing"
4 reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where
5 contradicted, a treating or examining doctor's opinion may not be rejected without "specific and
6 legitimate reasons' supported by substantial evidence in the record for so doing." *Lester*, 81 F.3d
7 at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

8 Social Security regulations distinguish between "acceptable medical sources" and other
9 medical sources. Acceptable medical sources include, for example, licensed physicians and
10 psychologists, while other non-specified medical providers are considered "other sources." 20
11 C.F.R. § 416.902. Less weight may be assigned to the opinions of other sources. *Gomez v.*
12 *Chater*, 74 F.3d 967, 970 (9th Cir. 1996). However, the ALJ's decision should reflect
13 consideration of such opinions, and the ALJ may discount the evidence by providing reasons
14 germane to each source. *Molina*, 674 F.3d at 1111.

15 2. *The ALJ Erred in Assessing Dr. Arnold's Opinion*

16 Dr. Arnold examined Plaintiff in February 2015 and completed a DSHS form opinion
17 describing her symptoms and limitations. AR at 357-61. Dr. Arnold opined that Plaintiff had
18 several moderate and marked functional limitations. *Id.* at 359.

19 The ALJ discounted Dr. Arnold's opinion because it was written more than a year before
20 Plaintiff filed her application for benefits and is therefore outside the time period found relevant
21 by the ALJ, and because Dr. Arnold listed a rule-out amphetamine abuse diagnosis. AR at 17,
22 24.

23 Neither reason is legitimate. Dr. Arnold's examination was indeed performed more than a

1 year before Plaintiff's current benefits application was filed, and is therefore, outside the
2 relevance window identified by the ALJ. AR at 17. But Plaintiff requested at the hearing that the
3 ALJ reopen a prior application that had been filed in January 2016 (*id.* at 47) and denied in
4 March 2016 (*id.* at 107-10), and the ALJ did not rule on Plaintiff's request at the hearing or in
5 the written decision. The Commissioner contends that the ALJ's oversight was harmless error.
6 (Dkt. # 17 at 16-17.) But if the ALJ had reopened Plaintiff's prior application, Dr. Arnold's
7 opinion would not have been discounted based on timing, because it was written within 12
8 months of the date the prior application was filed, and thus the ALJ's failure to rule on Plaintiff's
9 request impacted the ALJ's assessment of Dr. Arnold's opinion.

10 Furthermore, the ALJ did not explain why Dr. Arnold's rule-out amphetamine abuse
11 diagnosis undermined the value of Dr. Arnold's conclusions as to Plaintiff's functional
12 limitations. Plaintiff reported to Dr. Arnold that she had used methamphetamine three or four
13 times in the past year (AR at 357), but Dr. Arnold did not recommend chemical dependency
14 assessment/treatment and also opined that Plaintiff's limitations were not primarily caused by
15 drug or alcohol use (*id.* at 359). Thus, in the absence of an explanation as to how Dr. Arnold's
16 rule-out amphetamine abuse diagnosis undermines his conclusions, the Court does not find the
17 ALJ's reasoning to be legitimate.

18 On remand, the ALJ should reconsider Dr. Arnold's opinion and explicitly rule on
19 Plaintiff's request to reopen her prior application.

20 *3. The ALJ Erred in Assessing Dr. Rowe's Opinion*

21 Dr. Rowe examined Plaintiff in June 2017 and wrote a narrative report describing her
22 symptoms and limitations. AR at 632-40. Dr. Rowe did not describe any specific functional
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1 limitations but indicated that Plaintiff had concentration and persistence deficits and cognitive
2 limitations. *Id.* at 638-39.

3 The ALJ gave “some weight” to Dr. Rowe’s opinion, noting that Dr. Rowe recorded low
4 objective test scores, but that Dr. Rowe “specifically noted the negative effects of opiate
5 medication on [Plaintiff’s] demonstrated functioning at testing.” AR at 24. The Court agrees with
6 Plaintiff (dkt. # 16 at 11) that the ALJ mischaracterized Dr. Rowe’s opinion via selective
7 quotation: Dr. Rowe did note (as the ALJ quoted in the decision) that Plaintiff was taking opiate
8 medications, which can impact cognitive functioning, but went on to indicate (in a part of the
9 opinion that was not quoted by the ALJ) that the medication would *not* explain her low memory
10 test scores because other test results were incompatible with opiate intoxication. AR at 639.
11 Instead, Dr. Rowe suggested that Plaintiff’s low memory test scores reflect deficits in retention
12 as well as low motivation and fatigue during testing. *Id.*

13 The ALJ’s stated reasoning is not legitimate because it does not accurately reflect the
14 content of Dr. Rowe’s opinion, and therefore on remand, the ALJ should reconsider Dr. Rowe’s
15 opinion and may recontact him for clarification, if warranted.

16 4. *The ALJ Did Not Harmfully Err in Assessing Ms. Van Hoff’s Opinion*

17 Ms. Van Hoff completed a DSHS form opinion in February 2018 describing Plaintiff’s
18 physical symptoms and limitations. AR at 645-47. Ms. Van Hoff listed Plaintiff’s fibromyalgia
19 diagnosis and opined that Plaintiff was limited to performing sedentary work for 6-12 months.
20 *Id.* at 646-47. Contemporaneous treatment notes indicated that Ms. Van Hoff had concerns about
21 whether Plaintiff’s eligibility for benefits would be negated by part-time work. *Id.* at 648-49.

22 The ALJ gave “some weight” to Ms. Van Hoff’s opinion, noting that it was an opinion of
23 limited duration and finding that her indication of Plaintiff’s full range of motion was

1 inconsistent with a restriction to sedentary work. AR at 23-24. These are germane reasons to
2 discount Ms. Van Hoff's opinions, based on reasonable inferences from the record. *See*
3 *Carmickle v. Comm'r of Social Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008) (indicating that
4 temporary limitations are insufficient to meet the durational requirement for a finding of
5 disability and serve as a valid reason to reject a physician's opinion); *Bayliss*, 427 F.3d at 1216
6 (rejecting physician's opinion due to discrepancy or contradiction between opinion and the
7 physician's own notes or observations is "a permissible determination within the ALJ's
8 province"). Although Plaintiff offers alternative interpretations of Ms. Van Hoff's opinion (dkt. #
9 16 at 4), she has not shown that the ALJ's interpretation was unreasonable, and therefore has not
10 established error. *See Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir.
11 1999) ("Where the evidence is susceptible to more than one rational interpretation, it is the ALJ's
12 conclusion that must be upheld.").³

13 **B. The ALJ Erred in Discounting Plaintiff's Subjective Allegations**

14 The ALJ discounted Plaintiff's subjective allegations because (1) her activities contradict
15 her allegations, (2) her poor work history undermines her allegation that she is unemployed due
16 to her impairments, and (3) the medical record is inconsistent with her allegations and also
17 reveals irregularities in Plaintiff's use of medications. AR at 22-23. Plaintiff contends that these
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20 ³ These valid reasons to discount Ms. Van Hoff's opinions render harmless any error in the ALJ's finding
21 that Ms. Van Hoff's opinion was tainted by non-medical reasons. AR at 24. Ms. Van Hoff did express
22 concern in her treatment notes that if Plaintiff worked part-time she would be ineligible for benefits, but
23 there is no apparent connection between this concern and Ms. Van Hoff's opinion as to Plaintiff's ability
to work because Ms. Van Hoff's treatment notes include her opinion that Plaintiff does not have "the
capacity for full-time work in any significant way." *Id.* at 649. Thus, to the extent that the ALJ erred in
interpreting Ms. Van Hoff's opinion as undermined by her treatment notes discussing the interplay
between benefits eligibility and part-time work, this error is harmless in light of the other valid reasons
provided by the ALJ for discounting Ms. Van Hoff's opinion. *See Carmickle*, 533 F.3d at 1162-63.

1 reasons are not clear and convincing, as required in the Ninth Circuit. *See Burrell v. Colvin*, 775
2 F.3d 1133, 1136-37 (9th Cir. 2014).

3 *1. The ALJ Erred in Assessing Plaintiff's Activities*

4 The ALJ stated that Plaintiff's activities contradict her allegations of social, physical, and
5 cognitive limitations. AR at 22. An ALJ may properly discount a claimant's allegations if her
6 activities are inconsistent with her alleged limitations. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th
7 Cir. 2007).

8 First, as to social limitations, the Court notes that the ALJ did not identify any social
9 limitations that Plaintiff alleged, and the Court's review of Plaintiff's function report and hearing
10 testimony does not reveal that Plaintiff alleged any such limitations. *See* AR at 22, 33-70, 277-
11 86. Thus, the ALJ's reference to Plaintiff's social capabilities does not provide a basis for
12 discounting her allegations because the ALJ did not identify an inconsistency between Plaintiff's
13 allegations and her activities.

14 As to physical allegations, the ALJ stated that Plaintiff described diffuse body pain with
15 some good days and some bad days. AR at 22. The ALJ found these allegations to be
16 inconsistent with various activities — performing household chores 2-4 times per month, taking
17 the bus within the state of Washington, or participating in swim therapy at the YMCA — but
18 none of these activities is reasonably inconsistent with Plaintiff's allegations.

19 Lastly, as to cognitive allegations, the ALJ contrasted Plaintiff's allegation of an inability
20 to work on a more than part-time basis with Plaintiff's ability to initiate, sustain, and complete
21 tasks. AR at 22. The ALJ did not specify which tasks Plaintiff is able to initiate, sustain, and
22 complete, and thus did not explain how any such tasks would be inconsistent with a limitation to
23 part-time work. *Id.*

1 Because the ALJ failed to identify with specificity any activities that are reasonably
2 inconsistent with Plaintiff's allegations, the Court finds that this line of the ALJ's reasoning is
3 erroneous and fails to support the ALJ's assessment of Plaintiff's allegations.

4 2. *The ALJ Did Not Err in Assessing Plaintiff's Work History*

5 The ALJ noted that Plaintiff had not engaged in substantial gainful activity for multiple
6 years before her alleged onset date, which suggested that her unemployment was not due to her
7 impairments but due to lack of motivation or willingness to work. AR at 22-23. This is a valid
8 reason to discount a claimant's allegation of disability. *See Thomas*, 278 F.3d at 959 (ALJ
9 properly considered "'extremely poor work history'" and showing of "'little propensity to work
10 in [claimant's] lifetime'" as undermining her allegation of disability; noting claimant's "work
11 history was spotty, at best, with years of unemployment between jobs, even before she claimed
12 disability").

13 Although Plaintiff contends that this finding is undermined by the ALJ's reference to a
14 treatment note wherein Plaintiff reported to a provider that she desired to re-enter the workforce
15 at that time (AR at 23 (citing *id.* at 726)), this treatment note does not address the years of
16 unemployment referenced by the ALJ, and thus does not undermine the ALJ's findings based on
17 Plaintiff's longitudinal work history.

18 3. *The ALJ Erred in Assessing the Medical Record*

19 The ALJ found that Plaintiff's medical records did not corroborate her allegations. AR at
20 23. In the ALJ's summary of the medical record, the ALJ referenced Dr. Rowe's opinion and
21 mischaracterized it and selectively quoted from it in the same way as discussed *supra*. *Id.*
22 Because the ALJ must reconsider Dr. Rowe's opinion on remand, the Court finds that the ALJ
23 should also reconsider that opinion in connection with assessing Plaintiff's allegations on

1 remand.

2 To the extent that the ALJ also found that discrepancies and irregularities noted in
3 Plaintiff's medication usage undermined the reliability of her allegations, this line of reasoning is
4 not erroneous. *See Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9th Cir. 1999); *Massey v. Comm'r of*
5 *Social Sec. Admin.*, 400 Fed. Appx. 192, 194 (9th Cir. Oct. 19, 2010) (ALJ's finding that
6 claimant engaged in drug-seeking behavior is a clear and convincing reason for disregarding his
7 testimony).

8 Because the Court has found several errors in the ALJ's assessment of Plaintiff's
9 allegations, as well as in the ALJ's assessment of the medical evidence, the ALJ should
10 reconsider Plaintiff's allegations on remand.

11 V. CONCLUSION

12 For the foregoing reasons, the Commissioner's final decision is REVERSED, and this
13 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §
14 405(g). On remand, the ALJ should reconsider the opinions of Drs. Arnold and Rowe, reconsider
15 Plaintiff's subjective testimony, and rule on Plaintiff's request for reopening a prior application
16 for benefits.

17 Dated this 23rd day of November, 2020.

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20 MICHELLE L. PETERSON
21 United States Magistrate Judge
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